(19,078.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. 122.

D. E. WHEELER AND D. W. RIDENOUR, PARTNERS, DOING BUSINESS UNDER THE FIRM NAME AND STYLE OF WHEELER & RIDENOUR, PETITIONERS,

vs.

THE COUNTY OF PLUMAS.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

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a In the United States Circuit Court of Appeals for the Ninth Circuit.

D. E. WHEELER and D. W. RIDENOUR, Partners Doing Business under the Firm Name and Style of Wheeler & Ridenour, Plaintiffs in Error,
vs.
THE COUNTY OF PLUMAS, Defendant in Error. } No. 833.

Transcript of Record.

Upon writ of error to the United States circuit court for the northern district of California.

1 In the Superior Court of the State of California in and for the County of Plumas.

COUNTY OF PLUMAS, Plaintiff,
vs.
D. C. WHEELER and D. W. RIDENOUR, Partners Doing Business under the Firm Name and Style of Wheeler & Ridenour, Defendants.

Complaint.

Plaintiff above-named, complaining of the above-named defendants, for cause of action, alleges:

1.

That at all the times herein mentioned, plaintiff has been, and now is, a municipal corporation created by and existing pursuant to the laws of the State of California.

2.

That defendants now are, and during all the times herein mentioned have been, partners, and engaged in and carrying on the business hereinafter mentioned in the county of Plumas, under the firm name and style of Wheeler & Ridenour.

2 3.

That on the 9th day of January, A. D. 1900, the board of supervisors of the county of Plumas, at a regular session thereof, in pursuance of the powers in them vested by law, passed by unanimous vote, and thereafter, and within the time provided by law, caused to be duly published, an ordinance, numbered 125, of which the following is a true copy, to wit:

"*Ordinance No.* 125.

"An ordinance levying a license tax on persons, firms, copartnerships and corporations, carrying on the business of raising, grazing, herding or pasturing sheep or lambs within the county of Plumas, and providing for the collection of the same.

"The board of supervisors of Plumas county do ordain as follows:

"SEC. 1. Every person, firm, copartnership or corporation, engaged in the business of raising, grazing, herding or pasturing sheep or lambs within the county of Plumas, State of California, must annually procure a license therefor from the license collector of said county and shall pay therefor the sum of $10 for each one hundred sheep or lambs, owned by, in the possession or under the control of such person.

"SEC. 2. Each and every person, copartnership, firm or corporation, who may engage in the business of raising, grazing, herding or pasturing sheep or lambs within the county of Plumas, State of California, in order to procure a license therefor, must present to the license collector of Plumas county at the time of making ap-
3 plication therefor, an affidavit showing the number of sheep and lambs owned by, in the possession of, and under the control of such applicant for license within the county of Plumas, and upon presenting such affidavit and the payment of the license tax, as prescribed in section 1 of this ordinance, the applicant shall be granted a license to raise, graze, herd or pasture sheep or lambs within the county of Plumas.

"Provided, however, that any person who states in said affidavit a number of sheep or lambs less than the actual number of sheep or lambs owned by, in the possession of, or under the control of such person, in said Plumas county, shall be liable to said county of Plumas in the additional sum of ten dollars for each one hundred head of sheep or lambs so owned by, in the possession of, or under the control of such person; and all of the provisions of this ordinance relative to the collection of the license tax by this ordinance imposed, shall be applicable to suits for the collection of the said additional ten dollars per hundred head.

"SEC. 3. The license collector shall have the collection of the license provided for by this ordinance, and it is hereby made his duty to collect the same; and if any person required to take out a license under the provisions of this ordinance fails, refuses or neglects to take out such license, the license collector shall direct the district attorney to bring suit in the name of the county of Plumas against such person for the recovery of such license; and in such case, either the license collector or the district attorney may make the necessary affidavit for, and a writ of attachment
4 may issue without any bond being given on behalf of the plaintiff; and in case of recovery by the plaintiff, fifty dollars

damage must be added to the judgment and costs to be collected from the defendant.

"SEC. 4. It is hereby made the duty of the said license collector to ascertain by actual count, or otherwise, as in his judgment may seem best, at the time any person, firm, copartnership or corporation, commences in said county of Plumas, the business mentioned in this ordinance, the correct number of sheep and lambs owned by, in the possession of and under the control of such person, firm, copartnership or corporation, in said Plumas county.

"SEC. 5. The county auditor shall prepare and have printed suitable blank licenses for the license collector to carry out the provisions of this ordinance, with blank receipts for the license collector when sold.

"SEC. 6. The license collector shall collect a fee of one dollar for each license sold, which shall be paid into the salary fund of the county.

"SEC. 7. All money collected for license under the provisions of this ordinance shall be paid over to the county treasurer, as other moneys are, and placed to the credit of the general fund of the county.

"SEC. 8. The license to be collected under this ordinance is a debt owing to the county of Plumas; and shall become due and payable to said county in advance at the office of the license collector of said county.

"SEC. 9. This ordinance shall take effect and be in force on and after fifteen days from its passage, and all ordinances and parts of ordinances in conflict herewith are hereby repealed; provided that no actions, either civil or criminal, under ordinance No. 110, entitled 'An ordinance levying a tax on persons engaged in the business of raising, grazing or pasturing sheep or lambs within the county of Plumas for the year 1898, and providing for the collection of the same,' passed by the board of supervisors of said Plumas county, January 7th, 1898, pending at the date this ordinance takes effect, shall be deemed to be affected by this ordinance; but said ordinance, so far as such actions are concerned, shall be deemed to be continued in force, notwithstanding such repeal.

"The above ordinance was passed by the board of supervisors of Plumas county, California, at a regular meeting of said board, held January 9th, 1900, by the following vote: Frank Campbell, chairman, aye; J. W. Denton, aye; H. McCutcheon, aye; J. Stephan, aye; L. W. Bunnell, aye.

"Attest: H. C. FLOURNOY, *Clerk.*"

"STATE OF CALIFORNIA, } ss:
"*County of Plumas,* }

"I, H. C. Flournoy, clerk of the county of Plumas, California, and *ex-officio* clerk of the board of supervisors of said county, do hereby

certify that the foregoing ordinance, entitled ordinance No. 125, consisting of nine sections, was duly passed by the said board of supervisors at a regular meeting thereof on the 9th day of January, 1900, by the following vote: Ayes—Supervisors F. 6 Campbell, H. McCutcheon, J. W. Denton, J. Stephan, L. W. Bunnell; noes—None.

"In witness whereof, I have hereunto set my hand and affixed my official seal this 9th day of January, 1900.

"H. C. FLOURNOY,

"*Clerk of the County of Plumas, California, and ex-Officio Clerk of the Board of Supervisors Thereof.*"

4.

That said ordinance took effect fifteen days after its passage, as aforesaid, and ever since said time, said ordinance has been, and same now is, in full force and effect, and no part thereof has been repealed.

5.

That since the passage and publication of said ordinance as aforesaid, and while the same was and is in full force and effect, to wit, between the 1st day of May, 1900, and the 10th day of July, 1900, the said defendants engaged in, and still are engaged in, the business of raising, grazing, herding and pasturing sheep and lambs in the said county of Plumas, State of California.

6.

That said defendants, during the said time, between the 1st day of May, 1900, and the said 10th day of July, 1900, owned, possessed and had under their control within said county, and do still so own, possess and have under their control within said county of Plumas, State of California, twenty-one thousand sheep and lambs; and did, during said time, engage in and carry on, and still are engaged in and carrying on, the said business of raising, graz- 7 ing, herding and pasturing within said county of Plumas, State of California, the said twenty-one thousand sheep and lambs.

7.

That plaintiff has heretofore duly demanded of said defendants the payment of said license, as in said ordinance provided, but defendants have wholly failed, neglected and refused, and do still fail, neglect and refuse, to take out or procure the license required by said ordinance, or any license whatever therefor, or to pay to the said county of Plumas the sum of money as required by said ordinance, or any sum of money whatever; and said defendants have engaged in and carried on, and are still engaged in and carrying on, said business in said county, as aforesaid, without taking out or procuring any license whatever so to do.

8.

That on the 9th day of July, 1900, and prior to the commencement of this action, the license collector of said Plumas county did direct the district attorney of said Plumas county to commence suit in the name of said county against said defendants for the recovery of said license.

9.

That the sum of two thousand one hundred and fifty dollars is now due, owing and payable from defendants to plaintiff, and no part thereof has been paid.

Wherefore, plaintiff prays the judgment of this court against said defendants for the sum of twenty-one hundred dollars due for
8 license, as aforesaid; the further sum of fifty dollars damages, as provided in said ordinance, and its costs of this suit.

U. S. WEBB,
Attorney for Plaintiff and District Attorney of Plumas County.

STATE OF CALIFORNIA, } ss:
County of Plumas, }

I, H. C. Flournoy, county clerk of Plumas, and *ex-officio* clerk of the superior court, do hereby certify the foregoing to be a full, true and correct copy of a complaint now on file in my office.

Witness my hand and seal of said court, this the 20th day of August, 1900.

[SEAL.] H. C. FLOURNOY,
County Clerk and ex-Officio Clerk of the Superior Court.

(10c. internal revenue stamp. Canceled.)

(Endorsed:) Filed July 11th, 1900. H. C. Flournoy, clerk.

9 In the Superior Court of the County of Plumas, State of California.

THE COUNTY OF PLUMAS, Plaintiff,
vs.
D. C. WHEELER and D. W. RIDENOUR, Partners Doing Business under the Firm Name and Style of Wheeler & Ridenour, Defendants.

Special Appearance of Defendants.

To the plaintiff in the above-entitled case and to U. S. Webb, Esq. its attorney:

You are hereby notified that we, the undersigned, hereby enter our special appearance in the above-entitled case for the special pur-

pose, and none other, of filing a petition and bond for the removal of said cause to the circuit court of the United States, ninth circuit, northern district of California.

CAMPBELL & METSON,
Attorneys for Defendant.

(Endorsed:) No. 997. In the superior court, county of Plumas, State of California. The County of Plumas, plaintiff, *vs.* D. C. Wheeler *et al.*, defendants. Special appearance. Filed August 4th, 10 1900. H. C. Flournoy, clerk. By R. L. Erwin, deputy clerk. Service of the within special appearance is hereby acknowledged this 4th day of August, 1900. U. S. Webb, attorney for plaintiff.

State of California, }
County of Plumas, } *ss:*

I, H. C. Flournoy, county clerk of Plumas, and *ex-officio* clerk of the superior court, do hereby certify the foregoing to be a full, true and correct copy of a special appearance now on file in my office. Witnesss my hand and seal of said court, this the 20th day of August, 1900.

[SEAL.]

H. C. FLOURNOY,
County Clerk and ex-Officio Clerk of the Superior Court.

(10c. internal revenue stamp hereto attached. Cancelled.)

11 In the Superior Court of the State of California in and for the County of Plumas.

THE COUNTY OF PLUMAS, Plaintiff,
vs.
D. C. WHEELER and D. W. RIDENOUR, Partners Doing Business under the Firm Name and Style of Wheeler & Ridenour, Defendants.

Petition for Removal of Cause.

To the honorable superior court of Plumas county, State of California:

The petition of D. C. Wheeler and D. W. Ridenour, partners, doing business under the firm name and style of Wheeler & Ridenour, the defendants in the above-entitled action, respectfully shows to this honorable court:

I.

That your petitioners are the defendants in the above-entitled action; that the said action has been commenced against them as partners, as aforesaid, in the said court by the plaintiff, to wit, The

County of Plumas, a body politic and municipal corporation, under the laws of the State of California, and that said action is of a civil nature.

12 II.

That the said plaintiff, on the 11th day of July, 1900, filed its complaint against the said defendants in the superior court of the State of California, in and for the county of Plumas.

That the time has not elapsed wherein your petitioners are allowed, under the practice and laws of the State of California, and the rules of said court, to appear, plead, demur, or answer said complaint.

III.

That at *all* the time said action was commenced, and continuously, for a long time prior thereto, and at all the times herein mentioned, the said plaintiff. The County of Plumas, was and is a body politic and municipal corporation under the laws of the State of California; and that the said plaintiff to wit, The County of Plumas, a body politic and municipal corporation under the laws of the State of California, was, at the time said action was commenced, and continuously for a long time prior thereto, ever since and at all times mentioned herein, is and was a citizen and resident of the State of California, within the jurisdiction of the United States circuit court, northern district of California, State of California.

That at the time said action was commenced, and continuously for some time prior thereto, ever since, and at all the times herein mentioned, the defendants were and are residents and citizens of the State of Nevada, and were and are not residents or citizens of the State of California.

13 IV.

That the controversy in this action, and every issue of fact and law therein, is wholly between citizens of different States; and every issue of fact and law involved in this controversy can be fully determined as between them, that is to say, as between this plaintiff, The County of Plumas, a body politic and municipal corporation; and the defendants, D. C. Wheeler and D. W. Ridenour.

V.

That the time of your petitioners, the defendants herein, to answer or plead to the complaint in the said action, filed as aforesaid, in the said superior court of California, in and for the county of Plumas, on the 11th day of July, 1900, has not yet expired; and your petitioners have not yet filed any paper, appearance, or pleading in said action, nor have they in any other way appeared therein.

VI.

That the matter in dispute in said action, and for which said action is brought, is an alleged debt, to wit, the sum of two thousand one hundred and fifty dollars, exclusive of costs, alleged to be due from defendants to plaintiff.

VII.

Your petitioners herewith present a good and sufficient bond as provided by the statute in such case, that they will on or before the first day of the next ensuing session of the United States circuit court, northern district of California, State of California, file a transcript therein of the record in this action, and for the payment of all costs which may be awarded by said court, if said circuit
14 court shall hold that this suit was wrongfully or improperly removed thereto; and your petitioners pray that this court proceed no further herein except to make the order of removal as required by law, and accept the bond presented herewith, and direct the transcript of the record herein to be made for said court, as provided by law, and as in duty bound, and your petitioners will ever pray.

D. W. RIDENOUR,
D. C. WHEELER,
Petitioners.

STATE OF NEVADA,
County of Washoe, } ss:

D. W. Ridenour, being duly sworn, says that he is one of the defendants in the above-entitled action, that he has read the foregoing petition and knows the contents thereof, and that the same is true of his own knowledge.

D. W. RIDENOUR.

Subscribed and sworn to before me this 31st day of July, A. D. 1900.

[SEAL.]

MARCUS FREDERICK,
Notary Public in and for Washoe County, Nevada.

(Endorsed:) Filed August 4th, 1900. H. C. Flournoy, clerk. By R. L. Erwin, deputy clerk.

STATE OF CALIFORNIA,
County of Plumas, } ss:

I, H. C. Flournoy, county clerk of Plumas and *ex officio* clerk of the superior court, do hereby certify the foregoing to be a full, true and correct copy of a petition now on file in my office.

15 Witness my hand and seal of said court, this the 20th day of August, 1900.

[SEAL.]

H. C. FLOURNOY,
County Clerk and Ex-officio Clerk of the Superior Court.

In the Superior Court of the State of California in and for the County of Plumas.

THE COUNTY OF PLUMAS, Plaintiff,
vs.
D. C. WHEELER and D. W. RIDENOUR, Partners Doing Business under the Firm Name and Style of Wheeler & Ridenour, Defendants.

Notice of Motion for Order of Removal.

To U. S. Webb, district attorney of Plumas county, attorney for plaintiff:

Please take notice that the defendants in the above-entitled case will, on the tenth day of August, 1900, at ten o'clock, a. m., of said day, or as soon thereafter as counsel can be heard, move the above-entitled court for an order removing said cause to the circuit court of the United States, for the northern district of California, ninth circuit, in accordance with the petition of defendants, a copy of which is hereto attached.

Dated August 4th, 1900.

J. C. CAMPBELL AND
W. H. METSON,
Attorneys for Defendants.

16 Due service of the above and foregoing notice of motion with a copy of the petition to remove said cause to the circuit court of the United States, ninth circuit, is hereby admitted this 4th day of August, 1900.

U. S. WEBB,
Attorney for Plaintiff.

(Endorsed:) Filed August 4th, 1900. H. C. Flournoy, clerk. By R. L. Erwin, deputy clerk.

STATE OF CALIFORNIA, } ss:
County of Plumas, }

I, H. C. Flournoy, county clerk of Plumas, and *ex-officio* clerk of the superior court, do hereby certify the foregoing to be a full true, and correct copy of a notice of motion now on file in my office.

Witness my hand and seal of said court, this the 20th day of August, 1900.

[SEAL.]

H. C. FLOURNOY,
County Clerk and Ex-officio Clerk of the Superior Court.

(10c. internal revenue stamp, hereto attached. Canceled.)

17 In the Superior Court of the County of Plumas, State of California.

THE COUNTY OF PLUMAS, Plaintiff,

vs.

D. C. WHEELER and D. W. RIDENOUR, Partners Doing Business under the Firm Name and Style of Wheeler & Ridenour, Defendants.

Bond on Removal of Cause.

Know all men by these presents, that we, D. C. Wheeler and D. W. Ridenour, defendants in the above-entitled action, as principals, and The United States Fidelity and Guaranty Company, a corporation, of Baltimore, Md., as surety, are held and firmly bound unto the County of Plumas a body politic and municipal corporation under the laws of the State of California, plaintiff in the above-entitled action in the sum of one thousand dollars ($1,000), lawful money of the United States of America, for the payment of which, well and truly to be made, we, and each of us, bind ourselves, and each of us, our successors, heirs, executors, and administrators, jointly and severally by these presents.

18 The conditions of this obligation are such that, whereas, the said D. C. Wheeler and D. W. Ridenour have applied, or are about to apply, by petition to the superior court of the State of California, in and for the county of Plumas, for the removal of a certain cause therein pending, wherein The County of Plumas, a body politic and municipal corporation under the laws of the State of California, is plaintiff, and D. C. Wheeler and D. W. Ridenour, partners, doing business under the firm name and style of Wheeler and Ridenour, are defendants, to the circuit court of the United States, ninth circuit, for the northern district of California, for further proceedings, on the grounds in said petition set forth, and that all further proceedings in the superior court in and for the county of Plumas be stayed:

Now therefore, if your petitioners, said D. C. Wheeler and D. W. Ridenour, partners as aforesaid, shall enter in said circuit court of the United States, for the northern district of California aforesaid, on or before the first day of the next regular session, a copy of the records in said suit, and shall pay, or cause to be paid, all costs that

may be awarded therein by the said circuit court of the United States, if said court shall hold that said suit was wrongfully or improperly removed thereto, then this obligation shall be void; otherwise shall remain in full force and effect.

D. C. WHEELER.
D. W. RIDENOUR.
[SEAL.] THE UNITED STATES FIDELITY AND GUARANTY COMPANY,
By its attorneys in fact, J. D. MAXWELL AND W. RIGBY.

19 Signed, subscribed, and sworn to this 1st day of August, 1900.

[SEAL.] MARCUS FREDRICK,
Notary Public in and for the County of Washoe, State of Nevada.

(Endorsed;) Filed August 4th, 1900. H. C. Flournoy, clerk. By R. L. Erwin, deputy clerk.

STATE OF CALIFORNIA, } ss:
County of Plumas; }

I, H. C. Flournoy, county clerk of Plumas, and *ex officio* clerk of the superior court, do hereby certify the foregoing to be a full, true and correct copy of a[illegible]nd now on file in my office.

Witness my hand [illegible]d seal of said court, this the 20th day of August, 1900.

[SEAL.] H. C. FLOURNOY,
County Clerk and Ex-officio Clerk of the Superior Court.

(10c. internal revenue stamp hereto attached. Canceled.)

20 In the Superior Court of the State of California in and for the County of Plumas.

THE COUNTY OF PLUMAS, Plaintiff,
vs.
D. C. WHEELER and D. W. RIDENOUR, Partners Doing Business under the Firm Name and Style of Wheeler & Ridenour, Defendants.

Order Removing Cause to Circuit Court.

On the pleadings and proceedings herein, and on the petition and bond filed herein by the defendant- under the statutes of the United States, and on motion of Campbell and Metson, defendants' attorneys, it is ordered that the security offered by the defendants

be accepted and said bond approved, and that the State court proceed no further in this cause, and that this cause be removed into the United States circuit court, ninth circuit, northern district of California, State of California.

Dated August 11th, 1900.

C. E. McLAUGHLIN, *Judge.*

(Endorsed:) Filed August 11th, 1900. H. C. Flournoy, clerk.

21 STATE OF CALIFORNIA, } ss:
County of Plumas, }

I, H. L. Flournoy, county clerk of Plumas, and *ex-officio* clerk of the superior court, do hereby certify the foregoing to be a full, true and correct copy of an order now on file in my office.

Witness my hand and seal of said court, this the 20th day of August, 1900.

[SEAL.] H. C. FLOURNOY,
County Clerk and ex-Officio Clerk of the Superior Court.

[10c. internal revenue stamp attached. Canceled.]

(Endorsed:) No. 12,972. United States circuit court, ninth judicial circuit, northern district of California. County of Plumas *vs.* D. C. Wheeler *et al.* Transferred record. Filed August 28, 1900. Southard Hoffman, clerk.

22 In the United States Circuit Court, Ninth Circuit, Northern District of California.

COUNTY OF PLUMAS, Plaintiff,
vs.
D. E. WHEELER and D. W. RIDENOUR, Partners, Doing Business under the Firm Name and Style of Wheeler & Ridenour, Defendants.

Demurrer.

Come now the defendants above named and demur to plaintiff's complaint, and assign the following ground of demurrer:

That said complaint does not state facts sufficient to constitute a cause of action.

Wherefore defendants pray to be hence dismissed with their costs.

J. C. CAMPBELL,
W. H. METSON,
Attorneys for Defendants.

23 NORTHERN DISTRICT OF CALIFORNIA, } ss:
City and County of San Francisco, }

J. C. Campbell, being first duly sworn, on oath says that he is one of the attorneys for the defendants in the above-entitled action; that the foregoing demurrer is not interposed for delay; that affiant makes this affidavit for the reason that defendants are absent from and now out of the city and county of San Francisco, wherein affiant resides.

J. C. CAMPBELL.

Subscribed and sworn to before me this 7th day of September, 1900.

[SEAL.] HOLLAND SMITH,
Notary Public in and for the City and County of San Francisco, State of California.

I hereby certify that the foregoing demurrer is, in my opinion, well founded in point of law.
Dated September 7th, 1900.

J. C. CAMPBELL,
Attorneys for Defendants.

(Endorsed:) Filed September 7, 1900. Southard Hoffman, clerk, By W. B. Beaizley, deputy clerk.

24 At a stated term, to wit, the November term, A. D. 1901, of the circuit court of the United States of America, of the ninth judicial circuit, in and for the northern district of California, held at the courtroom in the city and county of San Francisco, on Monday, the 25th day of November, in the year of our Lord one thousand nine hundred and one.
Present: The Honorable William W. Morrow, circuit judge.

THE COUNTY OF PLUMAS } No. 12972.
vs.
D. C. WHEELER ET AL. }

Order Overruling Demurrer.

Defendants' demurrer to the complaint herein, heretofore heard and submitted, having been fully considered, it was ordered that said demurrer be and hereby is overruled, in accordance with the oral opinion of the court this day delivered, with leave to defendants to answer within twenty days.

25 At a stated term, to wit, the March term A. D. 1902, of the circuit court of the United States of America, of the ninth

judicial circuit, in and for the northern district of California, held at the courtroom in the city and county of San Francisco, on Friday, the 7th day of March, in the year of our Lord, one thousand nine hundred and two.

Present: The Honorable William W. Morrow, circuit judge.

THE COUNTY OF PLUMAS, Plaintiff,
vs.
D. C. WHEELER ET AL., Defendants. } No. 12972.

Order for Default and Judgment for Plaintiff.

In this cause the court having, upon the 25th day of November, 1901, overruled defendants' demurrer to the complaint of plaintiff, with leave to defendants to answer said complaint within twenty days; and said time for answering having expired, and not having been extended, and said defendants having failed to answer the complaint herein, now, upon motion of Frank R. Wehe, Esq., on behalf of U. S. Webb, Esq., attorney for plaintiff, it is ordered that the default of the defendants D. C. Wheeler and D. W. Ridenour, partners doing business under the firm name and style of Wheeler & Ridenour, be and hereby is entered herein; and it is further ordered that judgment be entered herein in favor of plaintiff and against the defendants, in accordance with the prayer of plaintiff's complaint and for costs.

26 In the Circuit Court of the United States, Ninth Judicial Circuit, Northern District of California.

THE COUNTY OF PLUMAS, Plaintiff,
vs.
D. C. WHEELER and D. W. RIDENOUR, Partners, Doing Business under the Firm Name and Style of Wheeler & Ridenour, Defendants. } No. 12972.

Judgment.

In this cause the court having, upon motion of Frank R. Wehe, Esq., upon behalf of U. S. Webb, Esq., attorney for plaintiff, ordered that the default of the defendants be entered for failure to file an answer to the complaint within the time allowed by the court after the overruling of said defendants' demurrer to the complaint; and said default having been entered, and the court having thereupon ordered that judgment be entered in favor of the plaintiff and against the defendants, in accordance with the prayer of the complaint herein and for costs:

Now, therefore, by virtue of the law and by reason of the premises aforesaid, it is considered by the court that The County of

Plumas, plaintiff, do have and recover of and from D. C.
27 Wheeler and D. W. Ridenour, partners doing business under the firm name and style of Wheeler & Ridenour, defendants, the sum of two thousand one hundred and fifty dollars, together with its costs in this behalf expended, taxed at $25.80.

Judgment entered March 7th, 1902.

SOUTHARD HOFFMAN, *Clerk.*

A true copy:
Attest:
[SEAL.] SOUTHARD HOFFMAN, *Clerk*,
By W. B. BEAIZLEY, *Deputy Clerk.*

(Endorsed:) Filed March 7, 1902. Southard Hoffman, clerk. By W. B. Beaizley, deputy clerk.

In the Circuit Court of the United States, Ninth Judicial Circuit, in and for the Northern District of California.

COUNTY OF PLUMAS
vs.
D. C. WHEELER ET AL. } No. 12972.

Certificate to Judgment-roll.

I, Southard Hoffman, clerk of the circuit court of the United States, for the ninth judicial circuit, northern district of California, do hereby certify that the foregoing papers hereto annexed constitute the judgment-roll in the above-entitled action.

28 Attest my hand and the seal of said circuit court, this 7th day of March, 1902.

[SEAL.] SOUTHARD HOFFMAN, *Clerk*,
By W. B. BEAIZLEY, *Deputy Clerk.*

(Endorsed:) Judgment-roll. Filed March 7, 1902. Southard Hoffman, clerk. By W. B. Beaizley, deputy clerk.

In the Circuit Court of the United States, Ninth Circuit, Northern District of California.

COUNTY OF PLUMAS, Plaintiff,
vs.
D. E. WHEELER and D. W. RIDENOUR, Partners, Doing Business under the Firm Name and Style of Wheeler & Ridenour, Defendants.

Petition for Writ of Error and Supersedeas.

D. E. Wheeler and D. W. Ridenour, defendants above
29 named, feeling themselves aggrieved by the judgment of the above-entitled court, entered herein on the 7th day of

March, 1902, come now and petition said court for an order allowing said defendants to prosecute a writ of error to the honorable, the United States circuit court of appeals for the ninth circuit, and according to the laws of the United States in that behalf made and provided, and also that an order be made fixing the amount or security which the said defendant- shall give and furnish upon the said writ of error, and that upon the giving of such security all further proceedings in this court be suspended and stayed until the determination of said writ of error by the United States circuit court of appeals for the ninth circuit, and your petitioner- will ever pray.

A. E. CHENEY,
CAMPBELL, METSON & CAMPBELL,
Attorneys for Defendant.

(Endorsed:) Filed April 4, 1902. Southard Hoffman, clerk. By W. B. Beaizley, deputy clerk.

30 In the Circuit Court of the United States, Ninth Circuit, Northern District of California.

COUNTY OF PLUMAS, Plaintiff,
vs.
D. E. WHEELER and D. W. RIDENOUR, Partners, Doing Business under the Firm Name and Style of Wheeler & Ridenour, Defendants. } No. 148.

Assignment of Errors.

Afterward come D. E. Wheeler and D. W. Ridenour, defendants above named, and say in the record and proceedings in the above-entitled action there is manifest error in this, to wit:

I.

That the complaint of plaintiff above named in the said action does not state facts sufficient to constitute a cause of action against said defendant.

II.

That the above-entitled court erred in making and entering, on, to wit, the 25th day of November, 1901, that certain minute order wherein and whereby the demurrer of said defendants to the complaint was overruled.

31

III.

That said court erred in making and entering, on, to wit, the 7th day of March, 1902, its order that the default of said defendant- be entered for failure to file an answer to said com-

plaint within the time allowed by said court after the overruling of said defendants' demurrer to said complaint.

IV.

That said court erred in giving, making and entering its certain judgment in said action that said plaintiff do have and recover from said defendants the sum of two thousand five hundred and fifty dollars, together with its costs in such behalf expended.

V.

That said court erred in giving, making and entering in said action its judgment in favor of said plaintiff and against said defendants.

Wherefore, said defendants pray that said judgment of said circuit court of the United States, in and for the ninth circuit, northern district of California, be reversed, and that said court be ordered to make and enter its judgment that said plaintiff take nothing by its said action, but that said defendants be thence dismissed with judgment for their costs in such behalf expended.

A. E. CHENEY,
CAMPBELL, METSON & CAMPBLLL,
Attorneys for Defendants.

(Endorsed:) Filed April 4, 1902. Southard Hoffman, clerk. By W. B. Beaizley, deputy clerk.

32 At a stated term, to wit, the February term, A. D. 1902, of the circuit court of the United States, ninth circuit, northern district of California, held at the courtroom thereof in the city of San Francisco, on the 4th day of April, in the year of our Lord one thousand nine hundred and two.

COUNTY OF PLUMAS, Plaintiff,
vs.
D. E. WHEELER and D. W. RIDENOUR, Partners, Doing Business under the Firm Name and Style of Wheeler & Ridenour, Defendants.

Order Allowing Writ of Error.

Upon motion of the defendants above named, and upon filing a petition for a writ of error and an assignment of errors herein—

It is ordered that a writ of error be, and hereby is, allowed to have reviewed in the United States circuit court of appeals for the ninth circuit the judgment heretofore entered herein.

Dated this 4th day of April, 1902.

WM. W. MORROW, *Judge.*

33 (Endorsed:) Filed April 4th, 1902. Southard Hoffman, clerk.

In the Circuit Court of the United States, Ninth Circuit, Northern District of California.

COUNTY OF PLUMAS, Plaintiff,
vs.
D. E. WHEELER and D. W. RIDENOUR, Partners Doing Business under the Firm Name and Style of Wheeler & Ridenour, Defendants.

Order Fixing Amount of Bond and Supersedeas.

The defendants above named having this day filed their petition for a writ of error from the decision and judgment thereon made and entered herein, to the United States circuit court of appeals, in and for the ninth circuit, together with an assignment of errors, within due time, and also praying that an order be made fixing the amount of security which defendants should give and furnish upon said writ of error, and that upon the giving of such security all further proceedings in this court be suspended and stayed until the de-
34 termination of said writ of error by the said United States circuit court of appeals in and for the ninth circuit, and said petition having this day been duly allowed—

Now, therefore, it is ordered that upon the said defendants filing with the clerk of this court a good and sufficient bond in the sum of $3,000, to the effect that if the said defendants and plaintiffs in error shall prosecute the said writ of error to effect, and answer all damages and costs, if *he* fail to make *his* plea good, then the said obligation to be void, else to remain in full force and virtue, the said bond to be approved by the court that all proceedings in this court be, and the same are hereby, suspended and stayed until the determination of said writ of error by the said United States circuit court of appeals.

Dated this 4th day of April, 1902.

WM. W. MORROW, *Judge.*

(Endorsed:) Filed April 4, 1902. Southard Hoffman, clerk.

35 In the Circuit Court of the United States, Ninth Circuit, Northern District of California.

COUNTY OF PLUMAS, Plaintiff,
vs.
D. E. WHEELER and D. W. RIDENOUR, Partners Doing Business under the Firm Name and Style of Wheeler & Ridenour, Defendants.

Bond on Writ of Error.

Know all men by these presents, that we, D. E. Wheeler and D. W. Ridenour, and The United States Fidelity and Guaranty Company, a corporation, organized and existing under and by virtue of the laws of the State of Maryland, as surety, are held and firmly bound unto the plaintiff above named, in the sum of three thousand (3,000) dollars, to be paid to the said plaintiff, to which payment well and truly to be made we bind ourselves, and each of us, jointly and severally, and our, and each of our successors, representatives, and assigns, firmly by these presents.

Sealed with our seals and dated this 4th day of April, 1902.

36 Whereas, the above-named defendants have sued out a writ of error to the United States circuit court of appeals, in and for the ninth circuit, to reverse the judgment in the above-entitled case by the circuit court of the United States, ninth circuit, northern district of California.

Now, therefore, the condition of this obligation is such that if the above-named defendants, shall prosecute said writ to effect and answer all costs and damages, if they shall fail to make good their plea, then this obligation shall be void; otherwise to remain in full force and virtue.

D. E. WHEELER AND [SEAL.]
D. W. RIDENOUR, [SEAL.]
By J. C. CAMPBELL, *Attorney.*
THE UNITED STATES FIDELITY
[CORPORATE SEAL.] AND GUARANTY COMPANY,
By its attorney in fact, JOHN H. ROBERTSON.

Whereas, the United States Fidelity and Guaranty Company, a corporation duly incorporated under the laws of the State of Maryland, has deposited with me its charter or articles of incorporation and the statement required by section 3 of an act of Congress approved August 13, 1894, and entitled "An act relative to recognizances, stipulations, bonds, and undertakings, and to allow certain corporations to be accepted as surety thereon;" and has satisfied

37 me that it has authority under its charter to do the business provided for in said act, that it has a paid up capital of not less than $250,000.00 in cash or its equivalent, and that it is able to keep and perform its contracts;

Now, therefore, the said United States Fidelity and Guaranty Company is hereby granted authority to do business under said act in said State of Maryland and is also granted authority to do business under said act beyond the limits of said State in any judicial district of the United States in which it shall first have appointed an agent conformably to the provisions of section 2 of said act.

HOLMES CONRAD,
Acting Attorney-General.

Department of Justice, Washington, D. C., September 25, 1896.

[DEPARTMENT SEAL.]

DEPARTMENT OF JUSTICE,
WASHINGTON, D. C., *Dec.* 7, 1901.

The annexed is a true copy of an original authorization to do business, issued by the Attorney-General, under the act of Congress approved August 13, 1894.

Witness my hand and the seal of the department.

[SEAL.]

CECIL CLAY,
Chief Clerk.

38 *Statement of the United States Fidelity and Guaranty Company, Rendered to the Department of Justice, Washington, D. C.*

At the close of business, March 31st, 1902.

Commenced business August 1st, 1896.

Assets:

Investments, stocks and bonds (market value)	$1,326,479.85
Cash on hand and in banks	398,335.42
Collateral loans	570,894.00
Real estate	130,629.58
Loans secured by mortgages	22,000.00
Mortgages and other collateral a/c salvage	14,599.61
Advanced a/c contracts secured	37,958.99
Agents' balances, Fidelity and Surety, less commissions	176,965.94
Agents' balances, burglary, less commissions	29,277.91
Due for subscriptions department of guaranteed attorneys	24,752.14
Interest due and accrued	19,790.04
	$2,751,683.48

39 Liabilities:

Capital stock paid in cash	$1,500,000.00
Cash collateral deposits	148,087.38
Surplus and reserve	1,103,596.10
	$2,751,683.48

JOHN R. BLAND, *President.*

GEORGE R. CALLIS, *Secretary.*

STATE OF MARYLAND, } ss:
City of Baltimore, }

On this 7th day of April, 1902, before me, A. D. Patrick, a notary public in and for the city and State aforesaid, appeared John R. Bland and George R. Callis, president and secretary respectively, of the United States Fidelity and Guaranty Company, who, being by me severally duly sworn, did depose and say that they are such officers of the said company, and that the above and foregoing is a full, true and correct statement of the assets and liabilities of the said company, as they appeared upon the books of the said company on the 31st day of March, A. D. 1902.

In witness whereof, I have hereunto set my hand and official seal, the day and year aforesaid.

[NOTARIAL SEAL.] A. D. PATRICK,
Notary Public.

40 Form 400.

Form of Affidavit, Acknowledgment, and Justification by Guaranty or Surety Company.

STATE OF CALIFORNIA, } ss:
City and County of San Francisco, }

On this 4th day of April, one thousand nine hundred and two (1902), before me personally came John H. Robertson, known to me to be the attorney in fact of the United States Fidelity and Guaranty Company, a corporation described in and which executed the annexed bond of Wheeler & Ridenour, as surety thereon, and who, being by me duly sworn, deposes and says that he resides in the city of San Francisco, State of California, that he is the attorney in fact of said The United States Fidelity and Guaranty Company, and knows the corporate seal thereof; that said company is duly and legally incorporated under the laws of the State of Maryland; that said company has complied with the provisions of the act of Congress of August 13th, 1894, allowing certain corporations to be accepted as surety on bonds; that the seal affixed to the annexed bond (form —) of Wheeler and Ridenour is the corporate seal of said The United States Fidelity and Guaranty Company, and was thereto affixed by order and authority of the board of directors of said company; and that he signed his name thereto by like
41 order and authority as attorney in fact of said company; and that John H. Robertson is the duly authorized agent and attorney of said The United States Fidelity and Guaranty Company, to accept service of the process in the northern judicial district of the State of California, and that the assets of said company, unencumbered and liable to execution, exceed its claims, debts and li-

abilities of every nature whatsoever, by more than the sum of one million five hundred thousand dollars ($1,500,000.00).

JOHN H. ROBERTSON.

Sworn to, acknowledged before me, and subscribed in my presence this 4th day of April, 1902.

W. B. HARDING,
Notary Public in and for the City and County of San Francisco, Cal.

[SEAL.]

(Endorsed:) The within bond is approved. Wm. W. Morrow, judge. Filed April 5th, 1902. Southard Hoffman, clerk. By W. B. Beaizley, deputy clerk.

42 In the Circuit Court of the United States, Ninth Judicial Circuit, Northern District of California.

THE COUNTY OF PLUMAS, Plaintiff,
vs.
D. E. WHEELER and D. W. RIDENOUR Partners, Doing Business under the Firm Name and Style of Wheeler & Ridenour, Defendants. } No. 12972.

Certificate to Record on Writ of Error.

I, Southard Hoffman, clerk of the circuit court of the United States of America, of the ninth judicial circuit, in and for the northern district of California, do hereby certify the foregoing pages numbered from 1 to 36, inclusive, to be a full, true and correct copy of the record and proceedings in the above and therein entitled cause, as the same remain of record and on file in the office of the clerk of said court, and that the same constitutes the return to the annexed writ of error.

I further certify that the cost of the foregoing transcript of record is $21.25; that said amount was paid by the defendant's attorneys, and that the original writ of error and citation issued herein are hereto annexed.

43 In testimony whereof, I have hereunto set my hand, and affixed the seal of said circuit court, this 3d day of May, A. D. 1902.

[SEAL.]

SOUTHARD HOFFMAN,
Clerk of the United States Circuit Court, Ninth Judicial Circuit, Northern District of California.

Writ of Error.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States for the ninth circuit, northern district of California, Greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, or some of you, between D. E. Wheeler and D. W. Ridenour, partners, doing business under the firm name and style of Wheeler & Ridenour (defendants), plaintiffs in error, and County of Plumas (plaintiff), defendant in error, a manifest error hath happened, to the great damage of the said D. E. Wheeler and D. W. Ridenour, partners, doing business under the firm name and style of Wheeler and Ridenour, plaintiffs in error, as by their complaint appears.

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given,
44 that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States circuit court of appeals for the ninth circuit, together with this writ, so that you have the same at the city of San Francisco, in the State of California, on the 5th day of May next, in the said circuit court of appeals, to be then and there held, that the record and proceedings aforesaid being inspected, the said circuit court of appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness, the Honorable Melville W. Fuller, Chief Justice of the United States, the 5th day of April, in the year of our Lord one thousand nine hundred and two.

[SEAL.] SOUTHARD HOFFMAN,
Clerk of the Circuit Court of the United States for the Ninth Circuit, Northern District of California.

Allowed by:
WM. W. MORROW, *Judge.*

Service of the within writ and receipt of a copy thereof is hereby admitted this 12th day of April, 1902.

N. S. WEBB,
Attorney for Defendants.

The answer of the judges of the circuit court of the United States of the ninth judicial circuit in and for the northern district of California.

45 The record and all proceedings of the plaint whereof mention is within made, with all things touching the same, we

certify under the seal of our said court, to the United States circuit court of appeals for the ninth circuit, within mentioned at the day and place within contained, in a certain schedule to this writ annexed as within we are commanded.

By the court.

[SEAL.] SOUTHARD HOFFMAN, *Clerk.*

(Endorsed:) No. 12,972. Circuit court of the United States, ninth circuit, northern district of California. D. E. Wheeler *et al.*, plaintiffs in error, *vs.* County of Plumas, defendant in error. Writ of error. Filed April 17, 1902. Southard Hoffman, clerk. By W. B. Beaizley, deputy clerk.

Citation.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to County of Plumas, Greeting:

You are hereby cited and admonished to be and appear at a United States circuit court of appeals, for the ninth circuit, to be holden at the city of San Francisco, in the State of California, on the 5th day of May next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States, ninth circuit,
46 northern district of California, in a certain action numbered 12,972, wherein D. E. Wheeler and D. W. Ridenour, partners, doing business under the firm name and style of Wheeler & Ridenour are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable William W. Morrow, judge of the United States circuit court, ninth circuit, northern district of California, this 5th day of April, A. D. 1902.

WM. W. MORROW, *Judge.*

Service of within citation and receipt of a copy thereof is hereby admitted this 12th day of April, 1902.

N. S. WEBB,
Attorney for Defendants.

(Endorsed:) No. 12,972. Circuit court of the United States, ninth circuit, northern district of California. D. E. Wheeler *et al.*, plaintiffs in error, *vs.* County of Plumas, defendant in error. Citation. Filed April 17, 1902. Southard Hoffman, clerk. By W. B. Beaizley, deputy clerk.

47 (Endorsed:) No. 833. In the United States circuit court of appeals for the ninth circuit. D. E. Wheeler and D. W.

Ridenour, partners doing business under the firm name and style of Wheeler & Ridenour, plaintiffs in error, *vs.* The County of Plumas, defendant in error. Transcript of record. Upon writ of error to the United States circuit court for the northern district of California. Filed May 5, 1902. F. D. Monckton, clerk.

48 *Proceedings Had in the United States Circuit Court of Appeals for the Ninth Circuit.*

49 At a stated term, to wit, the October term, A. D. 1902, of the United States circuit court of appeals for the ninth circuit, held at the courtroom in the city and county of San Francisco, on Friday, the seventh day of November, in the year of our Lord one thousand nine hundred and two.

Present: The Honorable William B. Gilbert, circuit judge; Honorable Erskine M. Ross, circuit judge.

D. E. WHEELER ET AL., Plaintiffs in Error,
vs.
THE COUNTY OF PLUMAS, Defendant in Error. } No. 833.

Order of Submission.

Ordered, cause argued by J. C. Campbell, Esquire, counsel for the plaintiffs in error, no one appearing for the defendant in error and submitted to Gilbert and Ross, circuit judges, and Hawley district judge, for consideration and decision.

50 In the United States Circuit Court of Appeals for the Ninth Circuit.

D. E. WHEELER and D. W. RIDENOUR, Partners, Doing Business under the Firm Name and Style of Wheeler & Ridenour, Plaintiffs in Error,
vs.
THE COUNTY OF PLUMAS, Defendant in Error. } No. 833.

Opinion U. S. C. C. A.

Upon writ of error to the United States circuit court for the northern district of California.

A. E. Cheney, J. C. Campbell, and W. H. Metson for plaintiff in error.

U. S. Webb, for defendant in error.

Before Gilbert and Ross, circuit judges, and Hawley, district judge.

HAWLEY, *District Judge:*

This case presents substantially the same questions that are discussed and decided in Flanigan *v.* The County of Sierra, *ante*, ——,

and upon the authority of that case, the judgment of the circuit court is affirmed with costs.

(Endorsed:) Opinion. Filed March 4, 1903. F. D. Monckton, clerk.

51 United States Circuit Court of Appeals for the Ninth Circuit.

D. E. WHEELER and D. W. RIDENOUR, Partners Doing Business under the Firm Name and Style of Wheeler & Ridenour, Plaintiffs in Error,
vs.
THE COUNTY OF PLUMAS, Defendant in Error. } No. 833.

Judgment.

In error to the circuit court of the United States for the northern district of California.

This cause came on to be heard on the transcript of the record from the circuit court of the United States for the northern district of California, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this court, that the judgment of the said circuit court in this cause be, and the same is hereby, affirmed, with costs.

(Endorsed:) Judgment. Filed and entered March 4, 1903. F. D. Monckton, clerk.

52 At a stated term, to wit, the October term A. D. 1902, of the United States circuit court of appeals for the ninth circuit, held at the courtroom, in the city and county of San Francisco, on Wednesday, the twenty-seventh day of May, in the year of our Lord one thousand nine hundred and three.

Present: The Honorable William B. Gilbert, circuit judge; Honorable William W. Morrow, circuit judge; Honorable Thomas P. Hawley, district judge.

D. E. WHEELER ET AL., etc., Plaintiffs in Error,
vs.
THE COUNTY OF PLUMAS, Defendant in Error. } No. 833.

Order Denying Petition for a Rehearing.

Ordered, petition for a rehearing heretofore filed herein denied.

United States Circuit Court of Appeals for the Ninth Circuit.

D. E. WHEELER and D. W. RIDENOUR, Partners Doing Business under the Firm Name and Style of Wheeler & Ridenour, Plaintiffs in Error,
vs.
THE COUNTY OF PLUMAS, Defendant in Error. } No. 833.

Certificate of Clerk C. C. A. to Transcript.

53 I, Frank D. Monckton, clerk of the United States circuit court of appeals for the ninth circuit, do hereby certify the foregoing fifty-two (52) pages, numbered from one (1) to fifty-two (52) inclusive, to be a true copy of the record and of all proceedings had in the above entitled case in the said the United States circuit court of appeals for the ninth circuit as the same remain of record in my office.

Attest my hand and the seal of the said the United States circuit court of appeals for the ninth circuit, at San Francisco, California, this 29th day of July, A. D. 1903.

[Seal United States Circuit Court of Appeals, Ninth Circuit.]

F. D. MONCKTON, *Clerk.*

54 UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the honorable the judges of the United States circuit court of appeals for the ninth circuit, Greeting:

Being informed that there is now pending before you a suit in which D. E. Wheeler and D. W. Ridenour, partners doing business under the firm name and style of Wheeler & Ridenour, plaintiffs in error and The County of Plumas, defendant in error, which suit was removed into the said circuit court of appeals by virtue of a writ of error to the circuit court of the United States for the northern district of California, and we, being willing for certain reasons that the said cause and the record and proceedings therein should

55 be certified by the said circuit court of appeals and removed into the Supreme Court of the United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 20th day of October, in the year of our Lord one thousand nine hundred and three.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

56 [Endorsed:] File No. 19,078. Supreme Court of the United States. No. 427, October term, 1903. Wheeler & Ridenour *vs.* The County of Plumas. D. No. 833. United States circuit court of appeals for the ninth circuit. Writ of certiorari. Filed Oct. 26, 1903. F. D. Monckton, clerk U. S. circuit court of appeals for the ninth circuit.

57 In the United States Circuit Court of Appeals for the Ninth Circuit.

D. E. WHEELER and D. W. RIDENOUR, Partners Doing Business under the Firm Name and Style of Wheeler & Ridenour, Plaintiffs in Error,
vs.
THE COUNTY OF PLUMAS, Defendant in Error. } No. —.

Stipulation that Record Filed in Supreme Court be Taken as Return to Writ of Certiorari.

Whereas, heretofore the plaintiffs in error above-named filed in the Supreme Court of the United States their petition for a writ of certiorari requiring the above entitled court to certify to the said Supreme Court for its review and determination the above entitled cause,

And whereas, together with said petition said plaintiffs in error filed in said Supreme Court a certified transcript of the record of the said cause and of the proceedings had therein in the said circuit court of appeals, and in the circuit court of the United States, for the ninth circuit, northern district of California,

And whereas, upon said petition a writ of certiorari according to the prayer of said petition issued out of and under the seal of said Supreme Court to the judges of said circuit court of appeals,

Now, therefore, be it and it is hereby stipulated by and between

counsel for the respective parties hereto that the said tran-
58 script may be taken as and for a return to said writ.

Dated this 31st day of October, 1903.

A. E. CHENEY,
J. C. CAMPBELL,
W. H. METSON,
Attorneys for Plaintiff- in Error.
U. S. WEBB &
L. N. PETER,
Attorney- for Defendant in Error.

(Endorsed:) Stipulation that record filed in Supreme Court be taken as return to writ of certiorari. Filed Nov. 4, 1903, F. D. Monckton, clerk.

I, Frank D. Monckton, clerk of the United States circuit court of appeals, for the ninth circuit, do hereby certify the foregoing to be a full, true and correct copy of "stipulation that record filed in Supreme Court be taken as return to writ of certiorari," filed on the 4th day of November, 1903, in the foregoing entitled cause as the original thereof remains of record in my office.

Attest my hand and the seal of said circuit court of appeals, at San Francisco, California, this 18th day of November, A. D., 1903.

[Seal United States Circuit Court of Appeals, Ninth Circuit.]

F. D. MONCKTON, *Clerk.*

59 United States Circuit Court of Appeals for the Ninth Circuit.

D. E. WHEELER and D. W. RIDENOUR, Partners Doing Business under the Firm Name and Style of Wheeler & Ridenour, Plaintiffs in Error,
vs.
THE COUNTY OF PLUMAS, Defendant in Error.
} No. 833.

Return to Writ of Certiorari.

By direction of the judges of the United States circuit court of appeals for the ninth circuit, I, Frank D. Monckton, clerk, in obedience to the annexed writ of certiorari issued out of the honorable the Supreme Court of the United States and addressed to the honorable the judges of the United States circuit court of appeals for the ninth circuit, commanding them to transmit to the said Supreme Court the record and proceedings in the above entitled cause, do attach to the said writ a certified copy of a stipulation entered into between the counsel for the respective parties to the said cause on the 31st day of October, 1903, the original of which stipulation is of record in my office and do hereby certify the same as due return to the said writ.

be certified by the said circuit court of appeals and removed
55 into the Supreme Court of the United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 20th day of October, in the year of our Lord one thousand nine hundred and three.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

56 [Endorsed:] File No. 19,078. Supreme Court of the United States. No. 427, October term, 1903. Wheeler & Ridenour *vs.* The County of Plumas. D. No. 833. United States circuit court of appeals for the ninth circuit. Writ of certiorari. Filed Oct. 26, 1903. F. D. Monckton, clerk U. S. circuit court of appeals for the ninth circuit.

57 In the United States Circuit Court of Appeals for the Ninth Circuit.

D. E. WHEELER and D. W. RIDENOUR, Partners Doing Business under the Firm Name and Style of Wheeler & Ridenour, Plaintiffs in Error,
vs.
THE COUNTY OF PLUMAS, Defendant in Error. } No. —.

Stipulation that Record Filed in Supreme Court be Taken as Return to Writ of Certiorari.

Whereas, heretofore the plaintiffs in error above-named filed in the Supreme Court of the United States their petition for a writ of certiorari requiring the above entitled court to certify to the said Supreme Court for its review and determination the above entitled cause,

And whereas, together with said petition said plaintiffs in error filed in said Supreme Court a certified transcript of the record of the said cause and of the proceedings had therein in the said circuit court of appeals, and in the circuit court of the United States, for the ninth circuit, northern district of California,

And whereas, upon said petition a writ of certiorari according to the prayer of said petition issued out of and under the seal of said Supreme Court to the judges of said circuit court of appeals,

Now, therefore, be it and it is hereby stipulated by and between

counsel for the respective parties hereto that the said tran-
58 script may be taken as and for a return to said writ.

Dated this 31st day of October, 1903.

A. E. CHENEY,
J. C. CAMPBELL,
W. H. METSON,
Attorneys for Plaintiff- in Error.
U. S. WEBB &
L. N. PETER,
Attorney- for Defendant in Error.

(Endorsed:) Stipulation that record filed in Supreme Court be taken as return to writ of certiorari. Filed Nov. 4, 1903, F. D. Monckton, clerk.

I, Frank D. Monckton, clerk of the United States circuit court of appeals, for the ninth circuit, do hereby certify the foregoing to be a full, true and correct copy of "stipulation that record filed in Supreme Court be taken as return to writ of certiorari," filed on the 4th day of November, 1903, in the foregoing entitled cause as the original thereof remains of record in my office.

Attest my hand and the seal of said circuit court of appeals, at San Francisco, California, this 18th day of November, A. D., 1903.

[Seal United States Circuit Court of Appeals, Ninth Circuit.]

F. D. MONCKTON, *Clerk.*

59 United States Circuit Court of Appeals for the Ninth Circuit.

D. E. WHEELER and D. W. RIDENOUR, Partners Doing Business under the Firm Name and Style of Wheeler & Ridenour, Plaintiffs in Error,
vs.
THE COUNTY OF PLUMAS, Defendant in Error.
} No. 833.

Return to Writ of Certiorari.

By direction of the judges of the United States circuit court of appeals for the ninth circuit, I, Frank D. Monckton, clerk, in obedience to the annexed writ of certiorari issued out of the honorable the Supreme Court of the United States and addressed to the honorable the judges of the United States circuit court of appeals for the ninth circuit, commanding them to transmit to the said Supreme Court the record and proceedings in the above entitled cause, do attach to the said writ a certified copy of a stipulation entered into between the counsel for the respective parties to the said cause on the 31st day of October, 1903, the original of which stipulation is of record in my office and do hereby certify the same as due return to the said writ.

In testimony whereof, I have hereunto set my hand and affixed the seal of said United States circuit court of appeals for the ninth circuit, at San Francisco, California, this 18th day of November, A. D. 1903.

[Seal United States Circuit Court of Appeals, Ninth Circuit.]

F. D. MONCKTON,
Clerk U. S. Circuit Court of Appeals for the Ninth Circuit.

60 [Endorsed:] File No. 19,078. Supreme Court U. S., October term, 1904. Term No. 122. D. E. Wheeler *et al.*, petitioners, *vs.* The County of Plumas. Writ of certiorari and return. Filed Nov. 27", 1903.